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Chapter 9 Counsel for Tulare Local Healthcare District

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re

CASE NO. 17-13797

TULARE LOCAL HEALTHCARE  
DISTRICT, dba TULARE REGIONAL  
MEDICAL CENTER,

Chapter 9

DC No.: WW-103

Debtor.

Date: May 16, 2019

Time: 9:30 a.m.

Tax ID #: 94-6002897

Place: 2500 Tulare Street

Address: 869 N. Cherry Street  
Tulare, CA 93274

Fresno, CA 93721  
Courtroom 13

Judge: Honorable René Lastreto II

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION FOR ORDER AUTHORIZING  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACT  
(STEVE CLARK & ASSOCIATES, INC.)

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1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.     INTRODUCTION**

3           On September 30, 2017, Tulare Local Healthcare District, dba Tulare Regional  
4   Medical Center ("Debtor" or the "District") filed a voluntary petition for Chapter 9  
5   bankruptcy.

6           Debtor is a California Healthcare District formed pursuant to Health and Safety  
7   Code Section 3200 et. seq. and is located in Western Tulare County.

8           Debtor has entered into a transaction with Adventist Health and its affiliates,  
9   ("AH") whereby Debtor will lease its acute care hospital to AH. The lease is to be  
10   effective on the closing date which is when the new lease is issued to AH ("Closing  
11   Date").

12          As a part of the lease, that certain executory contract identified as the letter of  
13   agreement, effectively dated March 7, 2017, by between the District and Steve Clark &  
14   Associates, Inc., which provided Medi-Cal reimbursement consulting services to the  
15   District (the "Contract") is to be assumed by Debtor and assigned to AH. A copy of the  
16   Contract is annexed as Exhibit "A" to the Declaration of Sanford Haskins.

17          The Debtor believes that there is no cure to be paid as a part of this  
18   assignment.

19   **II.   ARGUMENT**

20          A.   The Court Should Enter an Order Authorizing Debtor to Assume the  
21               Contract.

22          The Court should enter an order authorizing the District to assume and assign  
23   the Contract to AH. 11 U.S.C. §§ 365(a) allows the Debtor to assume any executory  
24   contract, subject to the approval of the Court.

25          The standard for reviewing whether a contract should be assumed and on what  
26   terms it should be assumed is one of business judgment. Group of Institutional  
27   Investors v. Chicago, Milwaukee, St. Paul and Pacific R.R. Co., 318 U.S. 523, 550  
28   (1943). In applying the "business judgment standard, courts show great deference to a

1 debtor's decision to assume executory contracts, with only a cursory review of [the  
2 debtor's] decision...." In re Pomona Valley Medical Group, Inc., 476 F.3d 665, 670 (9th  
3 Cir. 2007). As long as the decision to assume such contracts is a reasonable exercise  
4 of business judgment, a court should approve the assumption or rejection of an  
5 executory contract. See e.g. NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984).

6 Assumption of the Contract is essential to Debtor's successful reorganization  
7 because it will enable Debtor to consummate the lease with AH. AH and Debtor have  
8 determined that the Contract is critical to the business operations for which AH will use  
9 the assigned contract to be transferred from Debtor to AH.

10 To assume the Contract, Debtor must (1) cure defaults under such agreements,  
11 which there are not; (2) compensate non-debtor parties to such agreements for  
12 pecuniary loss resulting from said defaults; and (3) provide adequate assurance of  
13 future performance under the contract to the non-debtor parties to such agreements.  
14 11 U.S.C. § 365(b); See also In re Bowman, 194 B.R. 227, 230 (Bankr. D. Ariz. 1995).

15 Debtor will satisfy the requirements of 11 U.S.C. § 365(b) on the Closing Date  
16 by curing all defaults under the Contract, compensating non-Debtor parties to the  
17 Contract for pecuniary losses resulting from said defaults, and providing adequate  
18 assurance of future performance under the Contract to the non-debtor parties to those  
19 agreements (adequate assurance of future performance is fully discussed below in  
20 Section II(B)).

21 Based on the foregoing, Debtor has exercised sound business (and political)  
22 judgment and satisfied the requirements of 11 U.S.C. § 365(b), therefore the Court  
23 should entering an order authorizing the assumption and assignment of the Contract  
24 with such assumption and assignment to be effective upon the Closing Date.

25 B. The Court Should Approve Debtor's Assignment of the Contract.

26 11 U.S.C. § 365(f) states that, with the court's approval, a debtor may assign an  
27 executory contract or unexpired lease if "adequate assurance of future performance by  
28 the assignee of such contract or lease is provided...." 11 U.S.C. § 365(f)(2). "This

1 requirement is to be given a practical, pragmatic construction based upon the  
2 circumstances of the case.” In re PRK Enters., Inc., 235 B.R. 597, 603 (Bankr. S.D.  
3 Tex. 1999). “An absolute guarantee, such as a letter of credit, is not required to meet  
4 this standard.” In re Teck Hifi, Inc., 49 B.R. 876, 879 (Bankr. D. Mass. 1985)  
5 (bankruptcy court held that assignment to newly formed corporation that was a  
6 subsidiary of a larger corporation with strong financial statements, without more, met §  
7 365(f) requirements). “The assurance of future performance is adequate if performance  
8 is likely (i.e. more probable than not.” In re Prime Motor Inns, 166 B.R. 993, 997  
9 (Bankr. S.D. Fla. 1994).

10 AH is an established and well-capitalized entity. It has demonstrated its ability to  
11 perform by its prolonged growth and success in the health care industry. This status  
12 provides the non-Debtor parties to the Contract with adequate assurance of future  
13 performance by AH.

14 Based on the adequate assurance of future performance that AH’s purchase of  
15 Debtor’s personal property assets provides to non-Debtor parties to the Contract,  
16 Debtor’s assignment of the Contract to AH satisfies the requirements of 11 U.S.C. §  
17 365(f). For these reasons the Court should enter an order authorizing Debtor to assign  
18 the Contract to AH at the Closing Date.

19 C. The Court Should Waive the Fourteen Day Stay Provision of the Court  
20 Should Waive the Fourteen Day Stay Provisions of FRBP 6006(D).

21 “An order authorizing the trustee to assign an executory contract or unexpired  
22 lease under Sec. 365(f) is stayed until the expiration of 14 days after the entry of the  
23 order, unless the court orders otherwise.” FRBP 6006(d). Debtor hereby requests that  
24 the Court waive the fourteen (14) day stay to accommodate the consummation of the  
25 deal approved by the Court. Due to the close proximity of the Closing Date, AH and  
26 Debtor are under time pressure to complete tasks associated with the closing  
27 requirements of the lease. As a result, a fourteen (14) day stay of order authorizing the  
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1 assumption and assignment of the Contract could delay closing and jeopardize  
2 Debtor's ability to consummate the lease.

3 D. The Court Should Authorize Debtor to Pay the Cure Amount.

4 A debtor must cure any existing defaults under an executory contract or  
5 unexpired lease satisfy the requirements of 11 U.S.C. § 365(f) for obtaining a court  
6 order authorizing assumption of such agreement. 11 U.S.C. § 365(f). Debtor will cure,  
7 where applicable, existing defaults under the Contract, if any. Because the requested  
8 Order is not effective until the Closing, Debtor will have the financial ability to satisfy  
9 the cure requirement of 11 U.S.C. § 365(f).

10 For these reasons the court should enter an order authorizing Debtor to pay, at  
11 the Closing Date, the cure amount, if any exists, under the Contract.

12 **III. CONCLUSION**

13 WHEREFORE, the Debtor respectfully requests that the Court enter an order (1)  
14 authorizing the assumption and assignment of the Contract with such assumption and  
15 assignment to be effective upon the Closing Date; (2) waiving the fourteen (14) day  
16 stay provision of FRBP 6006(d); and (3) authorizing the Debtor to pay, at the Closing  
17 Date, the cure amount, if any exists, under the Contract.

18 Dated: May 1, 2019

19 WALTER WILHELM LAW GROUP,  
a Professional Corporation

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21 By: Riley C. Walter  
22 Riley C. Walter, Attorneys for Debtor,  
23 Tulare Local Healthcare District, dba  
24 Tulare Regional Medical Center  
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